

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219733.2 **DATE:** March 18, 1986
MATTER OF: Nasuf Construction Corporation--
Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where requester does not demonstrate that the decision was legally or factually incorrect.

Nasuf Construction Corporation (Nasuf) requests reconsideration of our decision in Gemma Constr. Co., Inc., B-219733, Nov. 21, 1985, 85-2 C.P.D. ¶ 584, wherein we sustained Gemma's protest under invitation for bids (IFB) No. 8223-AE, issued by the Veterans Administration (VA) for certain alterations and construction at the VA Medical Center in Northport, New York.

We affirm the prior decision.

In our prior decision we found that the solicitation did not require a specific method to excavate the site for installation of foundation caissons and Gemma's bid as submitted took no exception to any of the invitation's requirements. Accordingly, we held that the VA's rejection of the bid as nonresponsive was improper and recommended that award be made to Gemma if the company is determined to be responsible.

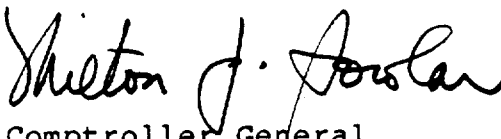
In its request for reconsideration, Nasuf essentially renews its original contention (asserted in comments filed as an interested party to Gemma's protest) that to sustain Gemma's protest is to "retroactively legitimize" Gemma's qualified or nonresponsive bid to the prejudice of Nasuf and other bidders. In our decision, we specifically addressed the issue of whether Gemma's bid qualified its obligation to provide the exact thing called for in the IFB. Because we found that the specifications were silent as to any particular method of performance, we concluded that, at bid opening, Gemma's bid did not contain a deviation from any specification requirement. Thus, in the event of award, Gemma would be bound to furnish the exact thing described in

the IFB, i.e., to excavate the site for installation of caissons with minimum disturbance to surrounding material and provide full lateral support of the caissons by the surrounding material. Our decision, therefore, has not resulted in the acceptance of a nonresponsive bid.

Nasuf also argues that if the specifications did not require a specific method to excavate for caissons, then paragraph 1.5A of Section 02370 of the specifications, entitled "Classification of Excavation," was ambiguous because it was susceptible of being interpreted as requiring a specific excavation method. Nasuf contends that this ambiguity penalized those firms, such as Nasuf, which submitted bids based on the understanding that only one excavation method was acceptable, and unfairly benefited Gemma. The requester points out that our interpretation differs from that of the VA and, allegedly, from that of all the bidders but Gemma. This, it states, gives credence to its claim of ambiguity. Nasuf therefore contends that, given this inequity in the bidding process, the VA should cancel the solicitation and resolicit bids.

It is a basic tenet of federal procurement law that specifications must be sufficiently definitive so as to permit competition on a common basis. Consequently, specifications must not be ambiguous. An ambiguity exists if the specifications are subject to more than one reasonable interpretation. See Wheeler Brothers, Inc., et al.--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 C.P.D. ¶ 388 at 7. We find, however, that paragraph 1.5A of the solicitation is not subject to more than one reasonable interpretation. The simple fact is that the solicitation as written did not specify the precise performance method with which a bidder must perform the site work. Although some bidders may have inferred that a specific method of excavation was desired, we see nothing in the solicitation that should have prompted such an inference.

The prior decision is affirmed.

for 
Comptroller General
of the United States